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February 4, 1999

By Federal Express

Esteban A. Aguilar, Esq.
Aguilar Law Offices
1011 Lomas NW
Albuquerque, NM 87102

Re: Ben Ezra Weinstein and Co., Inc. v America Online, Inc.

Dear Steve:

Pursuant to paragraph 2(c) of the Stipulation and Protective Order entered in this case by the Court on December 17, 1998, AOL hereby designates the following portions of the depositions taken by BEW as confidential:

Deposition of Stephen Kovacs

Page 4 lines 24-25
Page 5 lines 1, 14-17
Page 22 lines 4-6, 9-11
Page 31 lines 22-25
Page 32 lines 1-20
Page 35 lines 2-11
Page 36 lines 6-25
Page 37 lines 1-15

Deposition of Joseph Berg

Page 5 lines 8-10
Page 29 lines 6-17, 22-25
Page 30 line 1
Page 34 lines 15-22
Page 35 lines 3-10
Page 67 lines 20-25
Page 68 lines 1-4
Page 105 lines 18-25

Esteban A. Aguilar
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Page 106 lines 1-25
Page 107 lines 1-25
Page 108 lines 1-20
Exhibit 1

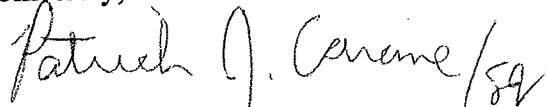
Deposition of Michael Hsu

Page 27 lines 8-9
Page 51 lines 19-25
Page 52 lines 1-16
Page 53 lines 7-25
Page 54 lines 1-23
Exhibit 3

I have enclosed copies of the relevant pages of the deposition transcripts, with the designated portions underlined.

Please call me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Patrick J. Carome" followed by a stylized monogram or initials "SA".

Patrick J. Carome

Enclosures

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(1) IN THE UNITED STATES DISTRICT COURT
 (2) FOR THE DISTRICT OF NEW MEXICO
 (3) ----- X
 (4) BEN EZRA, WEINSTEIN, AND :
 (5) COMPANY, INC. :
 (6) Plaintiff, :
 (7) v. : CIV 97-0485 LH/LFG
 (8) AMERICA ONLINE, INC., :
 (9) Defendant. :
 (10) ----- X
 (11) Washington, D.C.
 (12) Tuesday, January 19, 1999
 (13) Videotaped deposition of STEPHEN H.
 (14) KOVACS, a witness herein, called for examination
 (15) by counsel for Plaintiff in the above-entitled
 (16) matter, pursuant to notice, the witness being
 (17) duly sworn by MARY GRACE CASTLEBERRY, a Notary
 (18) Public in and for the District of Columbia, taken
 (19) at the offices of Hogan & Hartson, 555 13th
 (20) Street, N.W., Washington, D.C., at 9:04 a.m.,
 (21) Tuesday, January 19, 1999, and the proceedings
 (22) being taken down by Stenotype by MARY GRACE
 (23) CASTLEBERRY, RPR, and transcribed under her
 (24) direction.
 (25)

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(1) APPEARANCES:
 (2)
 (3) On behalf of the Plaintiff:
 (4) ESTEBAN A. AGUILAR, ESQ.
 (5) Aguilar Law Offices, P.C.
 (6) 1011 Lomas, N.W.
 (7) Albuquerque, New Mexico 87102
 (8) (505) 242-6677
 (9)
 (10) On behalf of the Defendant:
 (11) PATRICK J. CAROME, ESQ.
 (12) SAMIR C. JAIN, ESQ.
 (13) Wilmer, Cutler & Pickering
 (14) 2445 M Street, N.W.
 (15) Washington, D.C. 20037-1420
 (16) (202) 663-6610
 (17)
 (18) ALSO PRESENT:
 (19) MICHAEL L. WEINSTEIN
 (20) JACK CHARLES BEN EZRA
 (21) RAYMOND HBER, Videographer
 (22)
 (23)
 (24)
 (25)

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 (3) STEPHEN H. KOVACS PLAINTIFF
 (4) By Mr. Aguilar 5
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(1) PROCEEDINGS
 (2) THE VIDEOGRAPHER: This is in the
 (3) United States District Court for the District of
 (4) New Mexico. The plaintiff, Ben Ezra, Weinstein &
 (5) Company, Inc.; defendant, America Online, Inc.
 (6) Today's date is January 19, 1999 in case number
 (7) CIV 97-0485 LH/LFG. The witness is Stephen H.
 (8) Kovacs. The location of the deposition is 555
 (9) 13th Street, Northwest, Room 13W006, Washington
 (10) D.C.
 (11) Calling the deposition on behalf of the
 (12) plaintiff, Esteban A. Aguilar. Appearing on
 (13) behalf of the defendant is Patrick J. Carome and
 (14) Samir C. Jain of Wilmer, Cutler & Pickering. The
 (15) officer before whom this videotape deposition is
 (16) taken and sworn by is Mary Grace Castleberry.
 (17) The video camera operator is Raymond Heer,
 (18) representing Alderson Reporting Company, Suite
 (19) 400, 1111 14th Street, Northwest, Washington,
 (20) D.C. 20005.
 (21) This videotaped deposition commenced at
 (22) 9:04:21. Please swear in the witness.
 (23) Whereupon,
 (24) STEPHEN H. KOVACS,
 (25) residing at 106 County Route 93, New Hampton, New

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- (1) York 10958, was called as a witness by counsel
 (2) for Plaintiff, and having been duly sworn by the
 (3) Notary Public, was examined and testified as
 (4) follows:
 (5) MR. CAROME: If I could just note for
 (6) the record, this is Patrick J. Carome. I'm also,
 (7) in addition to being counsel for the defendant,
 (8) America Online, Inc., I'm also here as counsel
 (9) for the witness, Mr. Kovacs.
 (10) MR. AGUILAR: Individually?
 (11) MR. CAROME: Yes.
 (12) EXAMINATION BY COUNSEL FOR PLAINTIFF
 (13) BY MR. AGUILAR:
 (14) Q. Could you please give me your address,
 (15) Mr. Kovacs?
 (16) A. 106 County Route 93, New Hampton,
 (17) H-a-m-p-t-o-n, New York, 10958.
 (18) Q. When did you retain Mr. Carome to
 (19) represent you at the deposition today, sir?
 (20) A. Yesterday.
 (21) Q. And did you do that at your own urging
 (22) or on your own behalf or did somebody do that for
 (23) you?
 (24) MR. CAROME: I instruct the witness --
 (25) object and instruct the witness not to answer to

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- (1) the extent it would require you to divulge any
 (2) consultations between you and your counsel.
 (3) Either what you said to counsel or what your
 (4) counsel said to you.
 (5) BY MR. AGUILAR:
 (6) Q. And let me be real clear about that.
 (7) I'm not asking for the actual communications.
 (8) What I want to know is did you decide to hire him
 (9) on your own or was that something that was
 (10) suggested to you by someone else?
 (11) A. I had thought about how I was
 (12) represented individually and that came up in our
 (13) discussion.
 (14) Q. All right. And did you meet with
 (15) Mr. Carome in preparation for your deposition
 (16) today?
 (17) MR. CAROME: You can answer that but I
 (18) don't want you to go into the substance of any
 (19) communications we had.
 (20) THE WITNESS: Yes.
 (21) BY MR. AGUILAR:
 (22) Q. When did you meet with Mr. Carome? And
 (23) again, don't tell me the subject, don't tell me
 (24) the substance of the conversations. I just want
 (25) to know when you met with Mr. Carome.

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- (1) A. Yesterday.
 (2) Q. And did you meet with him at any other
 (3) time to prepare for your deposition today?
 (4) A. No.
 (5) Q. And so that I'm clear, the first and
 (6) only time that you met with him to prepare for
 (7) your deposition today was yesterday?
 (8) A. Yes.
 (9) Q. And how long did that meeting last,
 (10) sir?
 (11) A. About four hours, I guess.
 (12) Q. What time was the meeting, when did it
 (13) start and when did it end?
 (14) A. It started sometime after noon, shortly
 (15) after 12:00, and ended around -- I think it was
 (16) about 4:00 or 5:00.
 (17) Q. Can you tell me, sir, if you had any
 (18) communications by phone with Mr. Carome about any
 (19) of the facts and circumstances that brings us
 (20) here prior to yesterday?
 (21) A. No.
 (22) Q. Have you done anything to prepare for
 (23) your deposition today?
 (24) A. I met --
 (25) MR. CAROME: Just --

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- (1) BY MR. AGUILAR:
 (2) Q. Other than meeting with Mr. Carome.
 (3) A. No.
 (4) Q. Have you spoken to anyone else about
 (5) the testimony that you're going to give today
 (6) other than Mr. Carome?
 (7) A. No.
 (8) Q. Have you spoken with any of your
 (9) coworkers or employers about your testimony?
 (10) A. No.
 (11) Q. Did you review any documents in
 (12) preparation for your testimony today?
 (13) A. You mean other than what might have
 (14) taken place yesterday?
 (15) Q. No, I mean including what took place
 (16) yesterday. What documents did you review to
 (17) prepare yourself for your deposition today?
 (18) MR. CAROME: You can answer that if you
 (19) remember.
 (20) THE WITNESS: I mean, I looked at -- we
 (21) went through a bunch of documents yesterday for
 (22) four hours so I'm not sure I could give you a
 (23) detailed listing.
 (24) BY MR. AGUILAR:
 (25) Q. All right. Do you remember any of the

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- (1) and let me get the whole question out. The
 (2) reason for that is that the video may pick up you
 (3) nodding yes or shaking your head but the court
 (4) reporter can't do that and so you also need to
 (5) answer audibly, okay?
 (6) A. Yes.
 (7) Q. All right. What I asked you was
 (8) whether you were self-employed and whether you
 (9) were doing business in your own name or whether
 (10) you had another name that you were doing business
 (11) under.
 (12) A. Correct. And that --
 (13) Q. Is that the question --
 (14) A. Yeah, could you clarify what you meant
 (15) by doing business under another name?
 (16) Q. Sure. Were you doing business under
 (17) the name, for example, of Stephen H. Kovacs,
 (18) Incorporated or PA or Consultants or anything
 (19) like that, or were you just an independent, or do
 (20) you just do business under your own name?
 (21) A. You're speaking in relation to America
 (22) Online?
 (23) Q. Right, prior to July of 1997.
 (24) A. Yes. The consulting contract that I
 (25) had with America Online was in my name.

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- (1) Q. Now, was that contract with America
 (2) Online or with ACI?
 (3) A. That was with America Online.
 (4) Q. And I take it you were paid an annual
 (5) salary for doing the work that you did?
 (6) A. Yes.
 (7) Q. And when did you first go to work for
 (8) them under that contract?
 (9) MR. CAROME: I just -- the word salary
 (10) I think was vague and ambiguous. I just am
 (11) retroactively stating an objection to that.
 (12) BY MR. AGUILAR:
 (13) Q. When did you first go to work for them?
 (14) A. I would have to -- I can only give you
 (15) an estimate of when I started.
 (16) Q. That's fine. I'm talking about AOL,
 (17) not ACI.
 (18) A. Correct. And you're speaking about
 (19) the --
 (20) Q. The contract that you had with them, I
 (21) take it was in writing?
 (22) A. Yes.
 (23) Q. All right. When did you execute that
 (24) contract and when did you first start going to
 (25) work for them? And I'm not asking you to be

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- (1) precise. Just give me a ballpark.
 (2) MR. CAROME: Objection to the phrase
 (3) "going to work for them" being vague and
 (4) ambiguous. You can answer.
 (5) THE WITNESS: The first consulting
 (6) contract that I signed was back in 1993, I
 (7) believe, or early '94.
 (8) BY MR. AGUILAR:
 (9) Q. All right. And was it an annual
 (10) contract?
 (11) A. Yes, it was.
 (12) Q. Renewable annually?
 (13) A. I would have to look at the contract to
 (14) remember exactly what the terms were.
 (15) Q. All right. Is it fair to say that
 (16) under this contract, you were doing work for
 (17) America Online from 1993 through July of 1997?
 (18) MR. CAROME: Objection to the phrase
 (19) "doing work for America Online" being vague and
 (20) ambiguous.
 (21) BY MR. AGUILAR:
 (22) Q. Do you understand the question?
 (23) A. I was consulting for them during that
 (24) time frame, yes.
 (25) Q. And when you say you were consulting

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- (1) for them, what do you mean by that?
 (2) A. I was providing them with specific
 (3) efforts that were related to my consulting
 (4) contract.
 (5) Q. And what was that?
 (6) A. Which was to provide for member support
 (7) functions and manage volunteers.
 (8) Q. And did you have any other clients or
 (9) any other companies that you were doing work for
 (10) at that time?
 (11) MR. CAROME: Apart from America
 (12) Online?
 (13) MR. AGUILAR: Yes, sir.
 (14) MR. CAROME: You can answer that yes or
 (15) no. I can't imagine that going beyond that would
 (16) be appropriate subject matter for this
 (17) deposition.
 (18) THE WITNESS: Yes.
 (19) BY MR. AGUILAR:
 (20) Q. How many other people did you work for
 (21) other than America Online?
 (22) MR. CAROME: I object that this is
 (23) beyond the scope of permissible discovery. I'll
 (24) let you answer this but I think we're far beyond
 (25) where you're permitted to go.

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- (1) matter whether Mr. Carome understands the
 (2) question. What matters is whether you understand
 (3) the question, okay. So if you don't understand,
 (4) make sure you let me know.
 (5) A. Yeah.
 (6) Q. During 1997, calendar year 1997, were
 (7) you only doing consulting work for America Online
 (8) that year?
 (9) MR. CAROME: Objection, vague and
 (10) ambiguous. You can answer.
 (11) THE WITNESS: Yes.
 (12) BY MR. AGUILAR:
 (13) Q. So for calendar year 1997, it's fair --
 (14) A. I'm sorry, calendar year 1997 is when I
 (15) began employment with ACI.
 (16) Q. Right.
 (17) A. So I was not consulting at that point.
 (18) I was --
 (19) Q. An employee --
 (20) A. Under a contract of -- I was a
 (21) part-time employee with ACI.
 (22) Q. Okay. So let's break it down. From
 (23) January 1 through July of 1997 when you started
 (24) working for ACI --
 (25) A. Yes.

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- (1) Q. 100 percent of the consulting work that
 (2) you did was for America Online?
 (3) MR. CAROME: Objection, vague and
 (4) ambiguous.
 (5) BY MR. AGUILAR:
 (6) Q. Is that correct?
 (7) A. Could you define what kind of
 (8) consulting work you're talking about?
 (9) Q. Well, did you have a contract with
 (10) America Online during that first six months of
 (11) 1997?
 (12) A. I had a consulting contract as -- yes,
 (13) the consulting contract that I described earlier.
 (14) Q. All right. And 100 percent of the work
 (15) that you were doing under that consulting work --
 (16) under that consulting contract, rather, for
 (17) calendar year January 1 of 1997 through July of
 (18) 1997 was for America Online, is that correct?
 (19) A. That's correct.
 (20) Q. And after you went to work for ACI in
 (21) July of 1997, you were part-time for ACI or did
 (22) you continue as part time for America Online?
 (23) A. To my knowledge, my contract was with
 (24) ACI.
 (25) Q. All right. And so 100 percent of the

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- (1) work that you did at that point was for ACI?
 (2) MR. CAROME: Objection, vague and
 (3) ambiguous.
 (4) BY MR. AGUILAR:
 (5) Q. Starting in July of 1997?
 (6) MR. CAROME: You're saying 100 percent
 (7) of the work he did under the ACI contract was for
 (8) ACI, is that the question?
 (9) MR. AGUILAR: Right.
 (10) THE WITNESS: Yes.
 (11) BY MR. AGUILAR:
 (12) Q. Now, for calendar year 1996, I take it
 (13) that you had a consulting contract with America
 (14) Online also?
 (15) A. Yes.
 (16) Q. And was 100 percent of your work at
 (17) that point for America Online as well?
 (18) A. 100 percent of the work under that
 (19) contract was for America Online, yes.
 (20) Q. For calendar year '96?
 (21) A. Yes.
 (22) Q. Now, under the terms of your contract,
 (23) did you get a 1099 at the end of the year from
 (24) America Online for calendar year 1996 and the
 (25) first six months of 1997?

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- (1) MR. CAROME: Objection. I can't
 (2) imagine what possible relevance this could have
 (3) to the limited subject matter of this
 (4) deposition. I'm not going to instruct not to
 (5) answer but that the notion of the tax treatment
 (6) for this witness' compensation being within the
 (7) limited scope of this discovery is preposterous.
 (8) BY MR. AGUILAR:
 (9) Q. Go ahead, sir.
 (10) MR. CAROME: You can answer that, if
 (11) you can recall.
 (12) THE WITNESS: My consulting contract
 (13) called for me to pay any taxes that were to be
 (14) withheld or owed on money I received and that's
 (15) the way I handled it.
 (16) BY MR. AGUILAR:
 (17) Q. Okay. My question was, did you receive
 (18) a 1099?
 (19) A. I would have to check my records. I
 (20) don't know.
 (21) Q. Okay, you don't know. All right. Now,
 (22) in March of 1997, on March the 4th, 5th or 6th of
 (23) 1997, did you have a conversation with Mr. Ben
 (24) Ezra, sir?
 (25) A. I had a conversation with two people,

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- (1) Mr. Ben Ezra and Mike -- Mike.
 (2) Q. Mr. Weinstein?
 (3) A. Weinstein, yes.
 (4) Q. Do you remember what day those
 (5) conversations took place, sir?
 (6) MR. CAROME: Objection. I think he's
 (7) answered conversation singular. You've just
 (8) talked about conversations plural so I think that
 (9) that's an objectionable question.
 (10) BY MR. AGUILAR:
 (11) Q. Mr. Kovacs, you're the one who told me
 (12) you had two conversations, isn't that correct?
 (13) A. No.
 (14) Q. You had one conversation?
 (15) A. Yes.
 (16) Q. With two people?
 (17) A. That's correct.
 (18) Q. Were they on a conference call?
 (19) A. Yes.
 (20) Q. All right.
 (21) A. It was a speakerphone.
 (22) Q. Speakerphone, all right. And when did
 (23) that conversation take place?
 (24) A. Early in March. I don't remember the
 (25) exact date.

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- (1) Q. And what was the nature of the
 (2) conversation, sir?
 (3) A. I contacted Mr. Ben Ezra to let him
 (4) know that we were aware of his concerns and what
 (5) I -- and tell him --
 (6) Q. You're going to have to speak up for
 (7) me.
 (8) A. And to let him know I was aware of his
 (9) concerns and what information I had about what
 (10) was being done.
 (11) Q. All right. And how did you become
 (12) aware of his concerns?
 (13) A. I was sent an E-mail from Steve Case
 (14) mail group that he had contacted him.
 (15) Q. From Steve Case mail group?
 (16) A. Yes.
 (17) Q. What is that?
 (18) A. It's a group of people who answer Steve
 (19) Case -- mail that's addressed to Steve Case or I
 (20) guess inquiries that come in by phone. I'm not
 (21) entirely positive.
 (22) Q. And was that specifically addressed to
 (23) you, the E-mail?
 (24) A. As I recall, yes. It was addressed --
 (25) I received it so it had to have been addressed to

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- (1) me.
 (2) Q. Okay. And when you were working at --
 (3) oh, and by the way, the consulting work that you
 (4) did for AOL, that necessarily called for you to
 (5) be on AOL premises, isn't that true?
 (6) A. No, that's not true.
 (7) Q. Okay. Where were you doing the
 (8) consulting work for them?
 (9) A. From my office, from my home.
 (10) Q. Okay. And did you always work at your
 (11) house?
 (12) MR. CAROME: Again, this is highly
 (13) objectionable and beyond the scope of the limited
 (14) discovery that we're here for. I would really
 (15) urge you to move on to relevant territory.
 (16) MR. AGUILAR: You know, Pat, let me
 (17) explain something, okay? Just make the
 (18) objection, all right? Don't urge me, don't ask
 (19) me to do anything. Just make the objection, put
 (20) it on the record. If you're going to instruct
 (21) him not to answer, instruct him not to answer so
 (22) we can call the judge and get an answer to it.
 (23) But other than that, just make the objection. I
 (24) think that's quite sufficient under the rules,
 (25) okay?

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- (1) MR. CAROME: You're violating the
 (2) judge's order at this point.
 (3) MR. AGUILAR: I don't believe I am, but
 (4) that's your opinion and I have mine.
 (5) BY MR. AGUILAR:
 (6) Q. Now, Mr. Kovacs, my question was, did
 (7) you always work out of your house or from time to
 (8) time did you have occasion to go to America
 (9) Online?
 (10) MR. CAROME: Objection, vague and
 (11) ambiguous.
 (12) THE WITNESS: I'm not sure I can answer
 (13) that. There's two questions there.
 (14) BY MR. AGUILAR:
 (15) Q. Okay.
 (16) A. Can you break it into two questions so
 (17) I can answer them? Break it down for me.
 (18) A. I'm sorry?
 (19) MR. CAROME: He's asking you to break
 (20) down the question for him. It's an objectionable
 (21) compound question.
 (22) BY MR. AGUILAR:
 (23) Q. All right. Did you always work out of
 (24) your house?
 (25) A. No.

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- (1) Q. There were times when you went to the
 (2) AOL facility?
 (3) A. There were times when I went to the AOL
 (4) facility, yes.
 (5) Q. Where?
 (6) A. In Reston, I guess.
 (7) Q. Reston, Virginia?
 (8) A. I guess that's where it is, yeah.
 (9) Tysons Corner. I'm not -- you know, it's 2200
 (10) AOL Way, so it's there.
 (11) Q. All right. And on this occasion in
 (12) March of 1997 when you had the phone conversation
 (13) with Mr. Weinstein and with Mr. Ben Ezra, where
 (14) were you?
 (15) A. At my house.
 (16) Q. And what was your understanding of the
 (17) concerns they had at that time?
 (18) MR. CAROME: Objection, vague and
 (19) ambiguous. You can answer if you understand it.
 (20) THE WITNESS: Are you talking before I
 (21) made the phone call or after I made the phone
 (22) call?
 (23) BY MR. AGUILAR:
 (24) Q. Well, let's do it before you made the
 (25) phone call.

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- (1) A. My understanding was they were
 (2) concerned there was an inaccuracy in the price
 (3) that was being shown on their company or on
 (4) Mr. Ben Ezra's company.
 (5) Q. All right. And after the phone call,
 (6) what was your understanding of their concern?
 (7) A. My understanding was that Mr. Ben Ezra
 (8) was concerned that the inaccuracy of the price
 (9) would have an impact on a loan that that he was
 (10) -- that was pending to his company and that he
 (11) had upset shareholders.
 (12) Q. Now, when -- before you called him, did
 (13) you do any independent investigation to determine
 (14) whether there were inaccuracies in the price that
 (15) was being listed for the BNEZ stock?
 (16) A. Not specifically. I looked at the
 (17) stock price. I looked at the quote that we
 (18) provide on AOL.
 (19) Q. And what did you find out?
 (20) A. Given his comment and what I saw, I was
 (21) able to identify what the problem was.
 (22) Q. All right. And what was the problem?
 (23) A. It was an inaccurate quote on an OTC
 (24) issue, that I was aware we had had problems with
 (25) the information we were getting for some OTC

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- (1) issues and I assume this was now one of them.
 (2) Q. All right. And when did you become
 (3) aware that America Online was having these
 (4) problems?
 (5) MR. CAROME: Objection, vague and
 (6) ambiguous. I'm not sure there was a foundation
 (7) for this was a problem that America Online was
 (8) having.
 (9) BY MR. AGUILAR:
 (10) Q. You can answer the question, sir.
 (11) A. The problem with the quotes we were
 (12) being given, I was aware from, I suppose,
 (13) December or January prior to that March.
 (14) Q. And in your capacity as the manager of
 (15) volunteers -- is that a fair way to categorize
 (16) what your job duties were?
 (17) A. The title I use is coordinator. That's
 (18) probably a better description.
 (19) Q. And as I understand it, your job duty
 (20) was to coordinate the volunteers to do responses
 (21) to inquiries from AOL subscribers, is that fair?
 (22) A. Yes, that's correct.
 (23) Q. Is that a fair characterization?
 (24) A. Yes.
 (25) Q. And in your capacity as the coordinator

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- (1) of the volunteers, is it your job to find out
 (2) what the root of the problem is when subscribers
 (3) complain?
 (4) MR. CAROME: Objection, vague and
 (5) ambiguous as to the phrase "find the root of the
 (6) problem." You can answer.
 (7) THE WITNESS: No.
 (8) BY MR. AGUILAR:
 (9) Q. Is it fair to say that when you first
 (10) heard of the Ben Ezra/Weinstein problem and after
 (11) you looked it up on the screen, that you were
 (12) aware that it was similar to an ongoing problem
 (13) with the OTC stock quotes that AOL was receiving?
 (14) A. Yes.
 (15) Q. And you had become aware of that
 (16) through prior complaints, I take it?
 (17) A. Yes.
 (18) Q. How many prior complaints?
 (19) A. I --
 (20) MR. CAROME: Objection. This again is
 (21) beyond the scope of the limited discovery that's
 (22) allowed here, which is supposed to be whether AOL
 (23) alters or manipulates stock information.
 (24) BY MR. AGUILAR:
 (25) Q. Go ahead, sir.

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- (1) Plaintiff, and having been duly sworn by the
 (2) Notary Public, was examined and testified as
 (3) follows:
 (4) EXAMINATION BY COUNSEL FOR PLAINTIFF
 (5) BY MR. AGUILAR:
 (6) Q. Please state your full name, sir.
 (7) A. Joseph Berg.
 (8) Q. And what is your address, Mr. Berg?
 (9) A. 12100 Sunrise Valley Drive, Dulles,
 (10) Virginia.
 (11) Q. Are you presently employed?
 (12) A. Yes.
 (13) Q. Where are you employed?
 (14) A. America Online.
 (15) Q. In what capacity?
 (16) A. Senior systems integrator.
 (17) Q. And what does a senior systems
 (18) integrator do?
 (19) A. We set up and configure the hardware
 (20) and operating systems of various machines to
 (21) coexist on our network.
 (22) Q. Did you say to coexist on our network?
 (23) A. Yes.
 (24) Q. Are you known as the Berg-man?
 (25) A. No longer, yes.

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- (1) Q. You were the Berg-man 20?
 (2) A. Yes.
 (3) Q. And that was your E-mail name at AOL?
 (4) A. Yes.
 (5) Q. But it's no longer that?
 (6) A. No.
 (7) Q. What is it now?
 (8) A. Joe B. 4221.
 (9) Q. Joe B. 4221?
 (10) A. Yes.
 (11) Q. Mr. Berg, if at any time during the
 (12) deposition you want to break, just let me know.
 (13) I'll be more than happy to break. This isn't,
 (14) you know, an old police station where we beat you
 (15) with a rubber hose until you bleed or anything
 (16) like that. So just let me know if you want a
 (17) break.
 (18) Also, if you don't understand my
 (19) question, let me know and I'll rephrase the
 (20) question. Okay? I want to make sure that when I
 (21) ask you a question, that you understand what I'm
 (22) asking and when you give me an answer, that I
 (23) understand your answer, okay?
 (24) Also, as you can tell, we're
 (25) videotaping and we're also transcribing the

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- (1) deposition. You need to understand that while
 (2) the videotape can pick up you nodding yes and
 (3) shaking your head no, the court reporter cannot
 (4) do that. All right? And so I'm going to ask you
 (5) to answer audibly at all times and that way we
 (6) can get it down accurately, okay?
 (7) One final instruction. Would you
 (8) please make sure that you let me finish my
 (9) question before you give an answer?
 (10) A. Yes.
 (11) Q. All right. Now, how long have you
 (12) worked at AOL, sir?
 (13) A. Four years.
 (14) Q. Starting when?
 (15) A. January 17th, four years ago.
 (16) Q. Which makes it what, '90 --
 (17) A. '4.
 (18) Q. '94?
 (19) A. '95.
 (20) Q. '95? That would make it three years?
 (21) A. I'm trying to do the math real quick.
 (22) Q. That's okay.
 (23) A. So '94, then.
 (24) Q. So '94?
 (25) A. Yes.

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- (1) Q. All right. And have you always been a
 (2) systems integrator?
 (3) A. No.
 (4) Q. Okay, what did you do when you first
 (5) went to work there?
 (6) A. Computer room technician.
 (7) Q. All right. And how long did you do
 (8) that?
 (9) A. A year.
 (10) Q. One year?
 (11) A. One year.
 (12) Q. All right. And after that?
 (13) A. Associate system integrator.
 (14) Q. How long did you do that?
 (15) A. Like eight months.
 (16) Q. And after that?
 (17) A. Systems integrator specialist.
 (18) Q. And how long did you do that?
 (19) A. 10 months.
 (20) Q. Then what?
 (21) A. My current position.
 (22) Q. Senior systems integrator?
 (23) A. Yes.
 (24) MR. CAROME: If I could briefly
 (25) interject, I think there is confusion about --

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- (1) A. More specifically, what are you trying
(2) to do?
(3) Q. You know what, I'm not trying to do
(4) anything. I'm trying -- no, just a second,
(5) okay.
(6) More specifically, what I'm trying to
(7) find out is how do I access that information,
(8) Mr. Berg.
(9) MR. CAROME: Same objection. Answer
(10) the best you can.
(11) THE WITNESS: You are going to first go
(12) through a front-end processing machine which will
(13) assign you a terminal handler.
(14) BY MR. AGUILAR:
(15) Q. Terminal handler, is that what you
(16) said?
(17) A. Yes.
(18) Q. Okay. You're going to have to talk up
(19) nice and loud for me.
(20) A. I'm sorry.
(21) Q. That's okay.
(22) A. You'll be passed from there to a QP
(23) switcher process which will assign you a Stratus
(24) quote process. That Stratus quote process will
(25) request on your behalf the information from the

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- (1) Townsend machine that you are trying to get.
(2) Q. Okay. And I can get this as an AOL
(3) subscriber, correct?
(4) MR. CAROME: Objection, vague and
(5) ambiguous what "this" refers to.
(6) THE WITNESS: Not at the time in
(7) question, no.
(8) BY MR. AGUILAR:
(9) Q. Okay. When you say not at the time in
(10) question, you're talking about when? June, July,
(11) August 1996?
(12) A. Yes.
(13) Q. We couldn't get it then?
(14) A. No.
(15) Q. Why?
(16) A. This service was not in production.
(17) Q. Which service was not in production?
(18) A. What I've just described to you.
(19) Q. Okay. So back in June -- when did this
(20) service that you just described to me come into
(21) production? When was that put on line?
(22) A. I'm not 100 percent of the date.
(23) Q. Can you give me a ballpark?
(24) A. Early '97.
(25) Q. Thank you. All right. So what was in

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- (1) place and what was the process in June, July and
(2) August of 1996?
(3) MR. CAROME: Objection, vague and
(4) ambiguous, not clear what that means.
(5) THE WITNESS: With the exception of the
(6) Townsend machines, it was PC Quote machines.
(7) BY MR. AGUILAR:
(8) Q. Let me see if I can understand what
(9) you're telling me. The Townsend machines were
(10) not there, then, in 1996?
(11) A. That's incorrect.
(12) Q. Okay. That's incorrect?
(13) A. They were there.
(14) Q. Okay. So what does a PC Quote machine
(15) mean, then?
(16) A. That was the other software company we
(17) were using at that time before Townsend.
(18) Q. What was the name of the company?
(19) A. PC Quote.
(20) Q. And where are they located?
(21) A. I have no idea.
(22) Q. Did you deal with anyone from PC Quote?
(23) A. Tech support.
(24) Q. And when you dealt with tech support,
(25) where are they located?

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- (1) A. I don't know. It was a 1-800 number.
(2) Q. It was what?
(3) A. I don't know. It was an 800 number.
(4) Q. And that was the software that was
(5) being run at the time? Is that what you're
(6) telling me?
(7) A. On the PCs.
(8) Q. On which PCs?
(9) A. Other PCs than the six that we talked
(10) about earlier.
(11) Q. Okay. So they were different
(12) computers?
(13) A. Yes.
(14) Q. So the Townsend computers weren't there
(15) or they were there?
(16) A. They were there.
(17) Q. So what --
(18) A. They were not accessible by members
(19) yet.
(20) Q. Thank you. Why not?
(21) A. We weren't routing things in that
(22) direction.
(23) Q. Why?
(24) A. I don't know the answer to that.
(25) Q. Were the Townsend computers being used

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- (1) at all at that time by AOL?
- (2) A. By AOL, yes.
- (3) Q. For what purpose?
- (4) A. Developing AOL's software.
- (5) Q. What kind of software?
- (6) A. Client software, for the AOL client.
- (7) Q. Explain that to me. What do you mean
- (8) the AOL client?
- (9) A. The forms and pages that you see on the
- (10) AOL area, we create those pages.
- (11) Q. So if I get this right, the Townsend
- (12) computers were being used by AOL to develop the
- (13) pages that are accessible to AOL subscribers
- (14) during that period of time, is that correct?
- (15) MR. CAROME: Objection, vague and
- (16) ambiguous. You can answer.
- (17) THE WITNESS: Yes, but they weren't
- (18) accessible by members yet.
- (19) BY MR. AGUILAR:
- (20) Q. I understand that. But that's what
- (21) they were being used for?
- (22) A. Yes.
- (23) Q. At that time?
- (24) A. Yes.
- (25) MR. CAROME: Same objections.

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- (1) BY MR. AGUILAR:
- (2) Q. And it wasn't until early 1997 that the
- (3) switchover was done to make the Townsend machines
- (4) accessible by AOL subscribers --
- (5) MR. CAROME: Objection, vague and
- (6) ambiguous.
- (7) BY MR. AGUILAR:
- (8) Q. -- is that correct?
- (9) MR. CAROME: Misstates his prior
- (10) testimony.
- (11) THE WITNESS: I'm not sure.
- (12) BY MR. AGUILAR:
- (13) Q. You're not sure what?
- (14) A. Of what you just asked me.
- (15) Q. Okay. Well, you told me that this
- (16) scenario, which is you accessing a front-end
- (17) processing machine that routes -- that gives you
- (18) a terminal handler and then gives you a QP switch
- (19) processor and then a Stratus quote processor and
- (20) then ultimately allows you to access the Townsend
- (21) machines, you told me that was in place in early
- (22) 1997?
- (23) MR. CAROME: Objection, that misstates
- (24) his testimony.
- (25) BY MR. AGUILAR:

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- (1) Q. Is that correct or incorrect?
- (2) A. Could you repeat it again?
- (3) THE REPORTER: "Question: You told me
- (4) that this scenario, which is you accessing a
- (5) front-end processing machine that gives you a
- (6) terminal handler and then gives you a QP switch
- (7) processor and then a Stratus quote processor and
- (8) then ultimately allows you to access the Townsend
- (9) machines, you told me that was in place in early
- (10) 1997?"
- (11) THE WITNESS: No.
- (12) BY MR. AGUILAR:
- (13) Q. When was that in place? When did that
- (14) first appear?
- (15) A. June, July, August of '96.
- (16) Q. Okay. Well, now you've thoroughly
- (17) confused me. You told me that this was not in
- (18) place until early of 1997. What did you mean by
- (19) that?
- (20) A. It was not accessible to members until
- (21) early of '97.
- (22) Q. Okay. So the system is in place but
- (23) they're -- but it's not -- the Townsend machines
- (24) are not accessible to subscribers until early of
- (25) 1997?

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- (1) A. Correct.
- (2) Q. Now, were subscribers allowed access to
- (3) the other machines on which the PC Quote software
- (4) was being housed?
- (5) A. During this '96 time frame?
- (6) Q. Yes.
- (7) A. Yes.
- (8) Q. Okay. And in 1997, I take it there was
- (9) a switchover from the PC Quote machines to the
- (10) new Townsend machines, or to the Townsend
- (11) machines, correct?
- (12) MR. CAROME: I'm just going to state an
- (13) objection. When the witness prior gave you the
- (14) 1997 date, he told you that he couldn't give you
- (15) an exact date and that that was a ballpark. And
- (16) I believe that you're misstating his testimony
- (17) when you keep using that as if it were a firm
- (18) date.
- (19) BY MR. AGUILAR:
- (20) Q. Okay. Do you understand the question?
- (21) A. Could you repeat it?
- (22) Q. Sure.
- (23) MR. AGUILAR: Could you read it back.
- (24) THE REPORTER: "Question: And in 1997,
- (25) I take it there was a switchover from the PC

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- (1) apart?
- (2) A. I answered the question.
- (3) Q. Yes or no?
- (4) A. What question?
- (5) Q. It doesn't take two weeks to install
- (6) software. How much time did it take you? A day,
- (7) less than a day, an hour, what?
- (8) A. 10 minutes.
- (9) Q. Okay. So on two separate 10-minute
- (10) occasions approximately two weeks apart in
- (11) February of 1997, you upgraded or installed
- (12) different software?
- (13) A. That sounds like a good summary.
- (14) Q. Okay, good.
- (15) Now, in February 1997, when you
- (16) downloaded this different version or new version
- (17) or new software from Townsend, was the Townsend
- (18) software that was then in AOL's possession
- (19) running on all 12 machines?
- (20) A. Prior to February of '97?
- (21) Q. Yes.
- (22) A. Was the -- could you --
- (23) Q. Was the Townsend software running on
- (24) all 12 of the machines?
- (25) A. Which version?

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- (1) Q. The original version that you had.
- (2) A. Yes, yes.
- (3) Q. So I can assume -- correct me if I'm
- (4) wrong -- sometime between the summer of '96 and
- (5) February, you went ahead and installed the
- (6) original software you had on the other six new
- (7) Townsend computers?
- (8) A. Yes.
- (9) Q. Okay. Now, I want to go back and talk
- (10) a little bit about prior to production date, the
- (11) development of the AOL code to query the
- (12) information in the Townsend servers. Describe
- (13) for me, to the best of your knowledge, what kind
- (14) of code was being developed and for what
- (15) purpose.
- (16) A. I do not know the answer to that.
- (17) Q. You don't know?
- (18) A. No.
- (19) Q. You weren't involved in it?
- (20) A. No.
- (21) Q. Did you understand at that time, circa
- (22) summer of 1996, when the Townsend computers were
- (23) delivered to AOL, that the purpose of the
- (24) computers would be to allow subscribers to access
- (25) those computers for the information that was

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- (1) contained on them?
- (2) MR. CAROME: Objection, vague and
- (3) ambiguous as to what the phrase "access" means.
- (4) THE WITNESS: Could you define what you
- (5) mean by accessing the Townsend computers?
- (6) BY MR. AGUILAR:
- (7) Q. This process that you previously
- (8) described to me, did you understand that's what
- (9) the whole goal was, to get these computers up and
- (10) running?
- (11) MR. CAROME: Objection, vague and
- (12) ambiguous. There's absolutely no record of the
- (13) question you're asking him. You're showing him a
- (14) piece of paper with scribbling on it and this is
- (15) not a fair question.
- (16) BY MR. AGUILAR:
- (17) Q. Okay. We can break it down, but do you
- (18) understand what I'm asking?
- (19) A. No, I don't.
- (20) Q. All right. You told me that I, as an
- (21) AOL subscriber, in early 1997, which I assume now
- (22) means February of 1997, could access the
- (23) information that was on the Townsend machines by
- (24) initially getting a front-end processing machine
- (25) which would then assign a terminal handler, which

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- (1) would then switch me over to a QP switcher
- (2) process, which would then assign me a Stratus
- (3) quote process and then I could access the
- (4) information in the Townsend machines.
- (5) A. Okay. And your question again?
- (6) Q. Well, what do you call that process?
- (7) Is there a specific term of art that you referred
- (8) to that as?
- (9) A. (Witness shakes head.)
- (10) Q. Okay. Let me just now call this the
- (11) process of accessing information in the Townsend
- (12) machines, okay?
- (13) A. Okay.
- (14) MR. CAROME: Objection. I think the
- (15) definition is vague and ambiguous.
- (16) BY MR. AGUILAR:
- (17) Q. Okay. Now, this process which I've
- (18) just gone through with you is what I'm going to
- (19) be talking about. Okay? What I'm asking you
- (20) is -- well, let me go back and have you reread
- (21) that question for me, if you would.
- (22) THE REPORTER: "Question: This process
- (23) that you previously described to me, did you
- (24) understand that's what the whole goal was, to get
- (25) these computers up and running?"

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- (1) information.
- (2) Q. All right. And so now walk me through
- (3) it, if you would. And you can turn it around and
- (4) we'll let the videographer focus on it as you
- (5) walk me through the process. And he's going to
- (6) have to focus in on that and you might have to
- (7) angle it right as he tells you here so we can get
- (8) a good picture of it and you can use the pencil
- (9) as a pointer, if you don't mind.
- (10) MR. CAROME: I'd like the witness to be
- (11) able to see the document that he's walking
- (12) through right now.
- (13) MR. AGUILAR: He can lean over.
- (14) BY MR. AGUILAR:
- (15) Q. There you go.
- (16) A. Are you ready?
- (17) Q. Yeah.
- (18) A. The AOL client, somebody's home user
- (19) PC, requests a quote. It passes to a front-end
- (20) processing machine which assigns them a TIH --
- (21) well, when they logged on, they got the TIH.
- (22) They make a request, the TIH --
- (23) Q. What's a TIH?
- (24) A. From a terminal handler.
- (25) Q. Okay.

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- (1) A. Or the terminal handler, if they
- (2) request a quote, will pass that to the RMG
- (3) machine.
- (4) Q. All right. And up there the initials
- (5) let's go back to the terminal handler for a
- (6) minute. What does that say, the first line, FET?
- (7) A. FEP.
- (8) Q. And what does that mean?
- (9) A. Front-end processor.
- (10) Q. Okay.
- (11) A. Okay. Then you will hit the RMG
- (12) machine, remote managed gateway --
- (13) Q. Okay.
- (14) A. -- which has a QP switcher process that
- (15) will decide, based on your UID, which is your
- (16) user ID, which Stratus quote process you will be
- (17) handed off to for your request.
- (18) Q. Okay.
- (19) A. It will then hand that request -- your
- (20) request off to the Stratus process that it
- (21) chose. The Stratus process will then request
- (22) that information from the Townsend PC.
- (23) Q. All right. And it flows back the other
- (24) way as well?
- (25) A. Flows back the other way, bypassing the

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- (1) QP switcher. In other words, it goes from the
- (2) Stratus to your terminal handler FEP.
- (3) Q. All right. And so what is the purpose
- (4) of the QP switcher?
- (5) A. Just that, just to choose which Stratus
- (6) process. In other words, load balancing.
- (7) Q. To make sure that one machine doesn't
- (8) get overloaded?
- (9) A. Right. If there are 10 processors on
- (10) this machine, it would choose whichever of those
- (11) 10 is the least active.
- (12) Q. All right. Now, are all of those
- (13) computers?
- (14) MR. CAROME: Objection, vague and
- (15) ambiguous.
- (16) THE WITNESS: They are all types of
- (17) computer equipment.
- (18) BY MR. AGUILAR:
- (19) Q. Okay. So the FEP is a computer?
- (20) A. Yes.
- (21) Q. And the --
- (22) A. RMG.
- (23) Q. RMG is a computer?
- (24) A. Yes.
- (25) Q. And the Stratus is a computer?

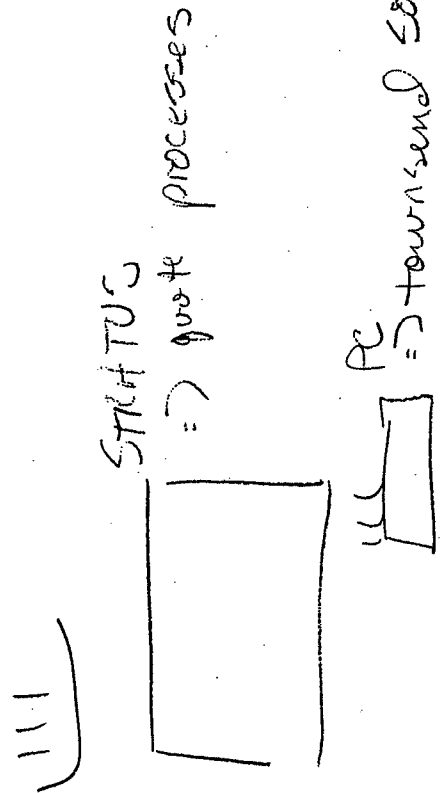
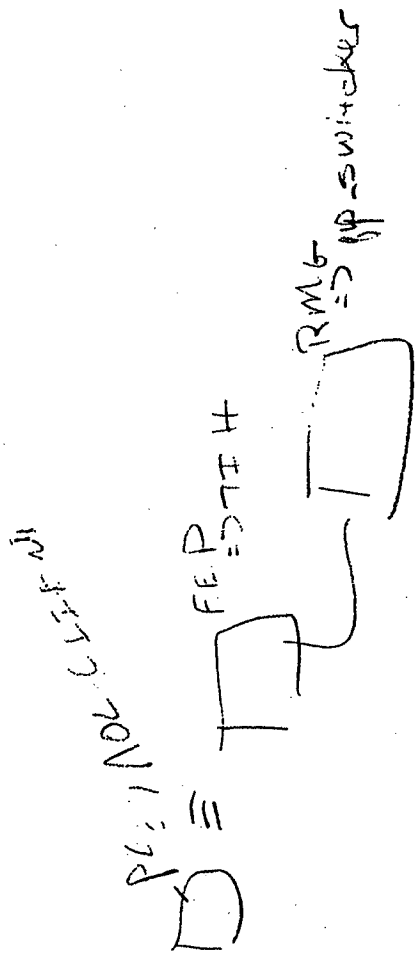
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- (1) A. Yes.
- (2) Q. And we know the Townsend software is on
- (3) the Townsend computers?
- (4) A. Right.
- (5) Q. Okay. So the only thing that isn't a
- (6) computer are the processors, or are those part of
- (7) the computer?
- (8) A. Those are part of -- well, define --
- (9) what did you ask me, processors?
- (10) Q. I'm sorry, you said it would assign
- (11) like a QP switch. Is that part of the computer?
- (12) A. That is a process running on the
- (13) computer.
- (14) Q. Okay, got it. Okay. And what's that
- (15) little mark between those two?
- (16) A. That would be -- that's the
- (17) connections.
- (18) Q. Okay.
- (19) A. That would be ethernet, whatever it is,
- (20) between these various machines.
- (21) Q. Okay. Could you sign and date that for
- (22) me, please?
- (23) A. Sure.
- (24) Q. Now, Mr. Berg, answering to the best of
- (25) your ability, is it impossible that AOL played

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EXHIBIT
BERG-1
H9-99 mc



for Berg
11/17/98

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- (1) A. For the development of software, it was
 (2) myself, Tom Tharp and Paul Jackson. And our
 (3) supervisor was Harry Morgan.
 (4) Q. Was Jim Hosheit part of that team?
 (5) A. No, he was not.
 (6) Q. What is his position at AOL?
 (7) A. I can't be certain what his current
 (8) position is.
 (9) Q. Okay. During that time, what was his
 (10) position?
 (11) A. I really can't be certain what his
 (12) position at that time was either. I can give you
 (13) approximately what I thought his responsibilities
 (14) were.
 (15) Q. Fine.
 (16) A. He was in charge of the business
 (17) portion of AOL or in part he was a -- he
 (18) controlled the look and feel of the area, is the
 (19) best I can describe it.
 (20) Q. The look and feel of what area?
 (21) A. Of the personal finance or stocks and
 (22) portfolio area.
 (23) Q. Okay. Was Mr. Hosheit there the entire
 (24) time that you've been employed at AOL?
 (25) MR. CAROME: Objection, vague and

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- (1) ambiguous.
 (2) THE WITNESS: No.
 (3) BY MR. AGUILAR:
 (4) Q. Okay. When did he come on board, to
 (5) the best of your recollection?
 (6) A. Sometime in '96, I believe.
 (7) Q. Does he work with you at the Woodward
 (8) Center location?
 (9) A. No, he does not. It's the Westwood
 (10) Center location.
 (11) Q. That's what I said, yes. He doesn't
 (12) work there?
 (13) A. I believe you said Woodward.
 (14) Q. Westwood Center. He doesn't work
 (15) there?
 (16) A. No, he does not.
 (17) Q. Where does he work?
 (18) A. He currently works in our Dulles
 (19) office.
 (20) Q. Today he does?
 (21) A. Yes.
 (22) Q. Back then, where did he work?
 (23) A. I can't recall. We've moved several
 (24) times during our employment.
 (25) Q. During the period of time from

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- (1) September of 1996 through June 1 of 1997, where
 (2) was the office located that you worked? Was it
 (3) the Westwood Center location?
 (4) A. I believe it's probably two offices.
 (5) One would be in the Westwood Center Drive
 (6) location.
 (7) Q. All right.
 (8) A. And the other would be on the Sunrise
 (9) Valley Drive in Reston location.
 (10) Q. And so you worked at both of those?
 (11) A. Yes, I have.
 (12) Q. During that period of time, did you
 (13) work physically at both of those place?
 (14) A. Yes, I did.
 (15) Q. Okay. Was Mr. Hosheit working
 (16) physically at both of those places while you were
 (17) there during that period of time?
 (18) A. No, I don't believe he ever had an
 (19) office at the Reston location.
 (20) Q. Okay, now, when you said that
 (21) Mr. Hosheit controlled the -- or dealt with the
 (22) look and feel of the stocks and portfolios or the
 (23) quotes and portfolios area of the personal
 (24) finance page, what do you mean by that?
 (25) A. Can you be more specific?

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- (1) Q. I'm just giving you back your answer
 (2) and so I would like for you to elaborate on me --
 (3) elaborate for me, if you would, what you meant by
 (4) that.
 (5) MR. CAROME: Objection, vague and
 (6) ambiguous.
 (7) THE WITNESS: His group was in charge
 (8) of designing how they wanted the area to function
 (9) and how they wanted the area to look.
 (10) BY MR. AGUILAR:
 (11) Q. Did his group have a name for it?
 (12) A. Other than personal finance, no, I
 (13) don't know of --
 (14) Q. Was he in charge of graphic interface?
 (15) Is that part of what his duties involved?
 (16) MR. CAROME: Objection, vague and
 (17) ambiguous.
 (18) THE WITNESS: To the best of my
 (19) knowledge, yes.
 (20) BY MR. AGUILAR:
 (21) Q. Now, back in, let's say the summer of
 (22) 1996, as I understand it, AOL was in the business
 (23) of selling its service to subscribers, is that
 (24) correct?
 (25) MR. CAROME: Objection, vague and

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- (1) MR. CAROME: Objection, vague and
 (2) ambiguous, unintelligible.
 (3) BY MR. AGUILAR:
 (4) Q. Can you draw that out in graphic form,
 (5) Mr. Hsu?
 (6) MR. CAROME: Same objections. Answer
 (7) as best you can, Mr. Hsu.
 (8) THE WITNESS: Yes, I think I can.
 (9) BY MR. AGUILAR:
 (10) Q. Would you do that, please, sir. And
 (11) we're going off the record.
 (12) MR. CAROME: Objection, vague and
 (13) ambiguous. And I object to going off the record
 (14) in the middle of the deposition.
 (15) MR. AGUILAR: We're taking a break.
 (16) We're going off the record.
 (17) THE VIDEOGRAPHER: Off the record and
 (18) the time on the screen is 10:06:22.
 (19) (Recess.)
 (20) THE VIDEOGRAPHER: On the record and
 (21) the time on the screen is 10:55:28.
 (22) BY MR. AGUILAR:
 (23) Q. Mr. Hsu, during the break, did you have
 (24) an opportunity to draw a schematic of diagram of
 (25) the information that is contained in paragraphs

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- (1) 8A through H of your deposition?
 (2) MR. CAROME: Objection, vague and
 (3) ambiguous.
 (4) THE WITNESS: Yes, I had the
 (5) opportunity to look at paragraphs A through H and
 (6) draw all the machines I had personal knowledge of
 (7) and all the hardware in those paragraphs.
 (8) MR. AGUILAR: All right. And could we
 (9) mark that, please, as an exhibit.
 (10) (Hsu Exhibit No. 3 was
 (11) marked for identification.)
 (12) BY MR. AGUILAR:
 (13) Q. Okay, sir, could you hold that up and
 (14) hold it off to the side so the videographer can
 (15) get it. And also let me give you a pencil and if
 (16) you could explain to us what you have drawn, I
 (17) would appreciate it, sir.
 (18) A. Okay. This represents the first
 (19) portion of paragraph A, on the very beginning
 (20) there. It's the data that transmits from
 (21) ComStock --
 (22) Q. Why don't you put this in back. It
 (23) will help you --
 (24) A. Okay.
 (25) Q. -- keep that page up. Yeah, there you

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- (1) go.
 (2) A. And it's transmitted via a couple
 (3) different mechanisms. Either a satellite feed or
 (4) a leased line feed into our complex. This
 (5) hardware, all this, resides at AOL.
 (6) Q. Okay. Why don't you draw a little box
 (7) around that for me.
 (8) A. Okay.
 (9) Q. You drew a circle. That's fine.
 (10) A. Too good at boxes there.
 (11) Q. Just so we're clear, that means all of
 (12) that is inside the AOL facility somewhere?
 (13) MR. CAROME: Objection, vague and
 (14) ambiguous.
 (15) BY MR. AGUILAR:
 (16) Q. Is that correct?
 (17) A. Yes.
 (18) Q. Go ahead.
 (19) A. The satellite feed comes into what's
 (20) called a mux, which basically it just -- it
 (21) changes the satellite signal, I guess, into a
 (22) serial data stream, as far as I know.
 (23) Q. Okay. And is the mux a computer?
 (24) A. Not to the best of my knowledge. I'm
 (25) sure it has some electronics in it that might be

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- (1) considered computer, but --
 (2) Q. And who owns that, do you know?
 (3) A. S&P ComStock.
 (4) Q. Okay.
 (5) A. And then it goes into a HADAX switch.
 (6) Its primary function is to monitor either line,
 (7) to make sure that there is data coming in. If it
 (8) loses connection, then it will switch from the
 (9) satellite feed to the leased line and vice versa.
 (10) Q. So that the information is continuous
 (11) in nature?
 (12) A. Right.
 (13) Q. Okay.
 (14) A. And if there is any disconnects, like
 (15) if we lose the satellite feed or lose the leased
 (16) line, either one would serve as a backup.
 (17) MR. CAROME: Objection. There is no
 (18) question pending now. If you want to pose a
 (19) question, go ahead.
 (20) THE WITNESS: Um --
 (21) MR. CAROME: There is no question
 (22) pending now. If Mr. Aguilar wants to pose a
 (23) question, he may do so.
 (24) MR. AGUILAR: He is responding,
 (25) Mr. Carome, to the question, describe what he

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- (1) drew and that's what he's doing. And I would ask
 (2) you to let him finish answering his -- answering
 (3) that question.
 (4) MR. AGUILAR: Go ahead, sir.
 (5) MR. CAROME: Objection, vague and
 (6) ambiguous.
 (7) THE WITNESS: Okay. The next portion
 (8) is a TID or a CSP.
 (9) BY MR. AGUILAR:
 (10) Q. And what is a TID?
 (11) A. I believe it's a terminal interface
 (12) device.
 (13) Q. Okay.
 (14) A. And I'm not exactly sure what a CSP
 (15) stands for.
 (16) Q. All right. What do they do?
 (17) A. They pull data from this satellite feed
 (18) and, to the best of my knowledge, what they do
 (19) here pertains to permissioning or delaying
 (20) certain exchanges or certain information. And
 (21) again, that's S&P ComStock equipment.
 (22) Q. Okay.
 (23) A. Okay. Once the data comes out of
 (24) there, it goes into a feed handler. And this
 (25) particular piece is a PC.

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- (1) Q. Okay. And who owns that?
 (2) A. It is owned by AOL.
 (3) Q. Okay. And what does the feed handler
 (4) do?
 (5) A. It takes the information that comes out
 (6) of the TID and distributes it in some format to
 (7) the S&P Townsend machines.
 (8) Q. All right. And what do the S&P
 (9) Townsend machines do?
 (10) A. They hold -- they take the information
 (11) from the feed handler and store it locally on
 (12) these machines.
 (13) Q. All right. For what purpose?
 (14) MR. CAROME: Objection, vague and
 (15) ambiguous.
 (16) THE WITNESS: For our purposes, they
 (17) store and index ticker symbols for securities so
 (18) that we can retrieve that data.
 (19) BY MR. AGUILAR:
 (20) Q. All right. And when you say we can
 (21) retrieve it, who are you talking about?
 (22) A. So members can retrieve it. Ultimately
 (23) the members can retrieve that data.
 (24) Q. All right. And who is in charge of
 (25) maintaining those computers?

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- (1) MR. CAROME: Objection, vague and
 (2) ambiguous.
 (3) THE WITNESS: Let's see, I believe
 (4) these computers are leased.
 (5) BY MR. AGUILAR:
 (6) Q. The feed handler computers?
 (7) A. Right. All these computers in this
 (8) suite right here.
 (9) Q. Okay.
 (10) A. Are leased but I'm not sure who is in
 (11) charge of maintenance for the hardware, as far as
 (12) making sure they stay up and running and
 (13) installing software.
 (14) Q. All right. Now, in 19 --
 (15) MR. CAROME: I just object that you
 (16) have interrupted in the middle of an answer.
 (17) BY MR. AGUILAR:
 (18) Q. I'm sorry, go ahead.
 (19) A. Joe Berg is actually responsible for
 (20) the software maintenance.
 (21) Q. Now, I understand that AOL -- well, let
 (22) me rephrase that. I understand that the Townsend
 (23) computers first showed up at AOL in the summer of
 (24) 1996. Is that correct?
 (25) A. As far as I can recall, yes.

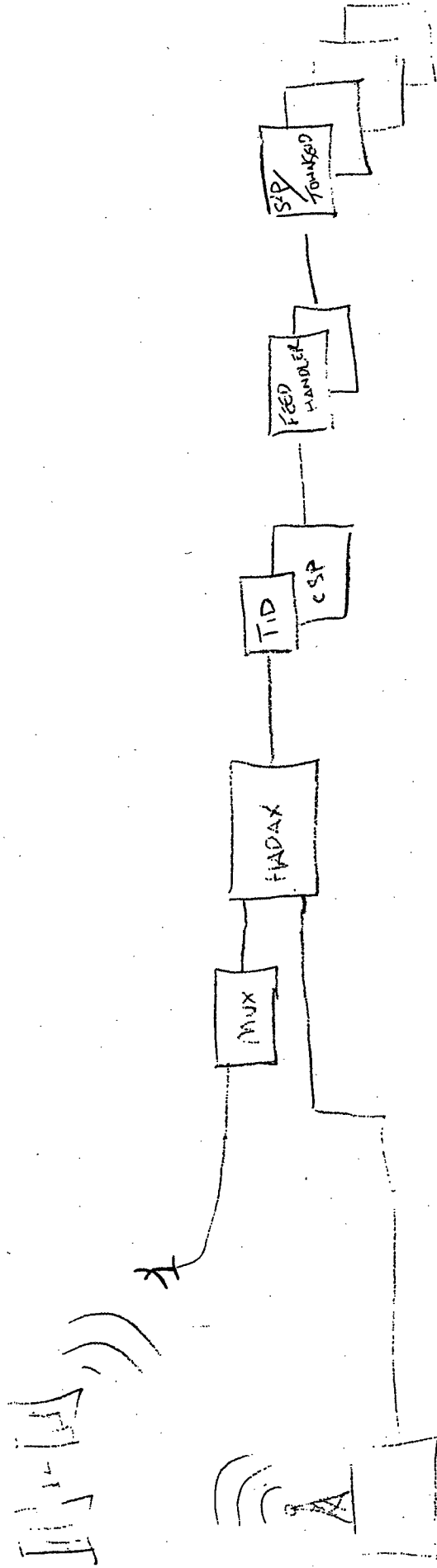
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- (1) Q. Okay. And do you remember what month?
 (2) A. Again, I wasn't really responsible for
 (3) the hardware so I can't recall.
 (4) Q. Okay. You were employed at that time,
 (5) though?
 (6) A. Yes, I was.
 (7) Q. And during that time, you were a
 (8) software programmer?
 (9) A. Yes.
 (10) Q. What was your understanding as to why
 (11) the Townsend computers appeared at the AOL
 (12) facility?
 (13) A. So that they could perform their
 (14) function, basically.
 (15) Q. At that time, how were the stock quotes
 (16) being provided --
 (17) A. Can I put this down?
 (18) Q. Sure. Thank you. How were the stock
 (19) quotes being provided to subscribers?
 (20) MR. CAROME: Objection, vague and
 (21) ambiguous.
 (22) THE WITNESS: In specific, there is two
 (23) areas that stock quotes are provided to members.
 (24) BY MR. AGUILAR:
 (25) Q. And what areas?

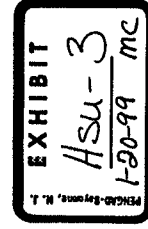
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Paragraph 8 mid-1996 thru present



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